punishes the *failure* of every distiller and rectifier to place a sign on his house. Section 3318 punishes the *failure* of every rectifier and wholesale liquor dealer to keep books or to make entries therein. Section 3340 punishes the *failure* of every brewer to keep books. Section 3342 punishes the failure of a brewer to affix and cancel the stamps on beer kegs.

The provision of the statute which was drawn in question in the above reported case belongs to the same class of provisions as those noted above, and they all form a part of that system of conventional rules adopted by the government for the collection of the revenue necessary to its existence and perpetuity. These rules should be liberally construed so as to advance the high purpose for which they were enacted: *United States* v. *Twenty-eight Cases*, 2 Ben. 63: *Cliquot's Champagne*, 3 Wall. 144; *Taylor* v. *United States*, 3 How. 210. The fact that the offence is declared by the statute to be a felony, does not change the construction which it should otherwise receive: *United States* v. *Staats*, 8 How. 41; *United States* v. *Thompson*, 6 McLean 56. The distinction between folonies and misdemeanors is, under Federal legislation and in the Federal courts, more nominal than real or practical.

H. B. JOHNSON.

United States District Court, Western District of Missouri.

UNITED STATES *v.* BITTINGER.

A person is a witness within the meaning of the statute (Revised Statutes U. S., § 5399) who has been designated as such either by the issuance of a subpœna or by the endorsement of his name on a complaint. The subpœna need not have been served.

A case is pending in a court of the United States in contemplation of said statute, when a complaint is lodged with the United States Commissioner charging a violation of the laws of the United States.

Before any one can be said to have endeavored to corruptly influence a witness, he must have known that the witness had been properly designated as such.

THIS was an indictment drawn under section 5399 of the Revised Statutes:

"Every person who corruptly, or by threats or force, endeavors to influence, intimidate or impede any witness or officer in any court of the United States in the discharge of his duty, or corruptly or by threats or force obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice therein, shall be punished," &c.

James S. Botsford and *H. B. Johnson*, for the United States.

Willard P. Hall and *Jeff. C. Chandler*, for the defendant.

KREKEL, J., charged the jury as follows:—The statute aims at defining two classes of offences; first, the endeavor to improperly influence, intimidate or impede a witness or officer in the discharge

of a duty in any court of the United States by corrupt means, such as bribery, or by threats or force.

It contemplates a case in which an attempt is made to directly interfere with a witness, and to improperly and illegally influence him. A witness, in the meaning of the statute and under the evidence in this case, will be taken by you to be a person for whom a subpœna had issued on part of the United States to appear before a U. S. Commissioner to testify on a charge for violation of the laws of the United States. A case, under the evidence before you, is pending in a court of the United States, when a complaint is lodged with a U. S. Commissioner charging a violation of the laws of the United States.

Before any one can be said to have endeavored to corruptly influence a witness, he must have known that the witness had been designated by the U. S. District Attorney, or the Commissioner, as one to be used as a witness.

The designation may be by the issuing of a subpœna, or by the endorsement of his name on a complaint, designating the witness by name, as such.

If the jury shall be satisfied from the evidence, that defendant Bittinger knew that a subpœna had been issued for Ferdinand Rendelman, or that Rendelman's name was endorsed on a complaint charging the defendant named therein with an offence against the laws of the United States, and if they shall further find that he corruptly influenced the said Rendelman to secrete, or so dispose of himself as to prevent process to be served on him, and if the jury shall further find that Rendelman had knowledge that such was the intention and object of the defendant, they should find the defendant guilty under the first count of the indictment.

If the jury shall find that no steps had been taken, either by the U. S. District Attorney or the U. S. Commissioner, to designate said Rendelman as a witness, either by an endorsement of his name on the complaint, or the issuing of a subpœna, or that the defendant had no knowledge that said Rendelman had been so designated as a witness, before the alleged interference, you should find the defendant not guilty under said first count.

The second class of offences which the section of the law cited denounces, is "corruptly, or by threats or force, obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice."

No particular class of persons are named in this last clause. The words "influence and intimidate," employed in the first clause, are dropped, and "due administration of justice in court" added, showing an intention to extend the application of the statute.

Applying the provisions last quoted to the 2d, 3d, 4th and 5th counts of the indictment, it will be necessary for you to find that the defendant, Bittinger, did some act or acts which obstructed or impeded the due administration of justice.

We have seen, so far as an interference with a witness who had a duty in the United States court to discharge is concerned, the offence comes within the first subdivision of the act. This being the case, the defendant, in order to be found guilty of obstructing the due administration of justice in any court of the United States, must have done, if not more, at least some act or acts in addition to those specified in the first subdivision of the statute we are considering, in order to find him guilty of having corruptly obstructed the due administration of justice.

There seems to be no other act of the defendant interfering with the due administration of justice testified to, than his interference with the witness Rendelman, and unless this interference can be construed into an obstruction of the due administration of justice, there would seem to be no evidence supporting the last four counts of the indictment. It would be, to say the least, a very doubtful construction, to seek to bring the offence from under the first and more definite description, for the purpose of applying the more general provision to the second class of offences, and you are not to do so unless you are satisfied the testimony in the case will justify it. You will have to determine from the evidence whether a case is made out against the defendant on the 1st, or the 2d, 3d, 4th and 5th counts of the indictment. These last four counts charge the corruptly endeavoring to obstruct and impede the due administration of justice before the U. S. Commissioner and in the District Court.

There is but one offence charged to have been committed, and it is your duty to say, if you find the defendant guilty, under what count of the indictment, bearing in mind, that the first count charges the corrupt interference with the witness, and the four last the corrupt obstruction of the administration of justice in the District Court. Verdict, "Guilty on all the counts."

The principal legal point made by the defence in the above reported case was, that, as the statute only punishes the corrupt influencing of a witness *in the*

discharge of his duty, the witness must have had a *duty* resting upon him which could only have been imposed by the service of a subpœna. In the case of *The State* v. *Keyes*, 8 Vt. 57, Chief Justice REDFIELD, decided that if a person knew he was to be a witness in a public prosecution he was not only a witness, but was in duty bound not to secrete himself, so as to prevent the service of process, and the authorities seem to be conclusive to the effect that process need not actually have been served: *State* v. *Carpenter*, 20 Vt. 9: *State* v. *Early*, 3 Harrington 562; 2 Wharton on Crim. Law (7th ed.), § 2287; 4 Black. Com. 126; 1 Bish. Criminal Law, § 665; 1 Russell on Crimes 183; 2 Bish. Crim. Pro., § 897; *Commonwealth* v. *Reynolds*, 14 Gray 87; *State* v. *Biebusch*, 32 Mo. 276.

H. B. JOHNSON.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF INDIANA.[1]

COURT OF APPEALS OF MARYLAND.[2]

SUPREME COURT OF PENNSYLVANIA.[3]

SUPREME COURT OF VERMONT.[4]

ARBITRATION AND AWARD.

Umpire.—By a parol agreement to submit a matter in controversy to the arbitration of two persons, it was stipulated that, in case they could not agree, they should select an umpire, and that the decision of such umpire and any of said arbitrators should be final, &c. *Held*, that the decision of the umpire was all that was required. If one or both the arbitrators had agreed with him, it would still have been the decision of the umpire: *Sanford et al.* v. *Wood*, 49 Ind.

BANKRUPTCY.

Plea of.—Plea in bar that since the commencement of suit, the defendants had been adjudged bankrupts, and the plaintiff had proved its debt in bankruptcy, and that the bankruptcy proceedings were still pending. *Held*, bad on general demurrer: *Brandon Manufacturing Co.* v. *Frazer*, 47 Vt.

BILLS AND NOTES.

Partnership—Want of Authority—Defence against Bond fide Holders.—Adams, a partner of Moorehead & Co., drew a note in favor of Whitten & Co., of whom also he was a member, and, after it was endorsed by the payees, endorsed the name of Moorehead & Co.; the note was sold to the plaintiff by a known bill-broker. *Held*, that these circumstances were not notice to the plaintiff that the endorsement was without authority: *Moorehead* v. *Gilmore*, 77 Pa.

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[1] From Jas. B. Black, Esq., Reporter; to appear in 49 Indiana Reports.

[2] From J. Shaaf Stockett, Esq., Reporter; to appear in 41 Maryland Reports.

[3] From P. Frazer Smith, Esq., Reporter, to appear in 77 Pa. State Reports

[4] From Hon. J. W. Rowell, Reporter; to appear in 47 Vermont Reports.